89- 1582

No. _____

In The
Supreme Court Of The United States

OCTOBER TERM, 1989

**STATE OF CONNECTICUT,
DEPARTMENT OF HUMAN RESOURCES,
WAYNE H. CAMILLIERI, JACK I. WINKLEMAN,**
Petitioners,

v.

**UNITED STATES MERIT SYSTEMS
PROTECTION BOARD,**
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners

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QUESTIONS PRESENTED

Whether in these cases, *the first time that the United States Merit Systems Protection Board ever ordered that funding be withheld a State*, the application of the provisions of 5 U.S.C. §§ 1501, et seq. ("Hatch Act"), to attempt to bar two State of Connecticut employees from being political candidates, to attempt to remove them from employment, and to impose a financial penalty of $151,046 against the State of Connecticut, was a violation of the Constitution as follows:

(a) Whether recent cases applying strict scrutiny in matters involving political activity require that strict scrutiny be applied in adjudicating First Amendment and equal protection issues raised in Hatch Act cases?

(b) Whether the application of the Hatch Act resulting in a significant financial penalty to the State of Connecticut for honoring the constitutional rights of its employees violated the Tenth Amendment by seriously intruding into the State's internal affairs?

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

TABLE OF AUTHORITIES (continued)

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, State of Connecticut, Department of Human Resources, Wayne H. Camillieri and Jack I. Winkleman, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit entered in this case on January 12, 1990.

OPINIONS OF THE COURTS AND ADMINISTRATIVE AGENCIES BELOW

The judgment and opinion of the United States Court of Appeals for the Second Circuit is unreported. A copy of the judgment and opinion is printed in the Appendix. App. 1A-3A.[1]

The memorandum of decision of the United States District Court for the District of Connecticut (Cabranes, J.) of July 24, 1989 is reported at 718 F.Supp. 125 (D. Conn. 1989). A copy of the opinion is printed in the Appendix. App. 4A-21A. The District Court directed the entry of judgment in that decision. Judgment was entered on July 26, 1989 and is printed in the Appendix. App. 68A-69A.

In the cases involving Wayne H. Camillieri, the Recommended Decision of the Chief Administrative Law Judge of the United States Merit Systems Protection Board has not been officially reported. That Recommended Decision is printed in the Appendix. App. 22A-33A. The Board's Final Decision and Order is reported at 33 M.S.P.R. 565 (1987) and is printed in the Appendix. App. 34A-38A. The Board's Order and Certification for withholding of funding is reported at 35 M.S.P.R. 167 (1987) and is printed in the Appendix. App. 39A-45A.

In the cases involving Jack I. Winkleman, the Recommended Decision of the Chief Administrative Law Judge of the United States Merit Systems Protection Board has not been officially reported. That Recommended Decision is printed in the Appendix. App. 46A-54A. The Board's Final Decision and Order is reported at 36 M.S.P.R. 71 (1988) and is printed in the Appendix. App. 55A-60A. The Board's

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[1] In this petition, the abbreviation "App." refers to the Appendix, and the abbreviation "R." refers to the Record filed with the United States Court of Appeals for the Second Circuit, whenever these abbreviations are used.

Order and Certification for withholding of funding is reported at 36 M.S.P.R. 692 (1988) and is printed in the Appendix. App. 61A-67A.

JURISDICTION

The judgment and the opinion of the United States Court of Appeals for the Second Circuit were made and entered on January 12, 1990 and copies are printed in the Appendix. App. 1A-3A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 5 U.S.C. § 1508. This petition is filed within the ninety days of the judgment of the Court of Appeals allowed by 28 U.S.C. § 2101(c).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves the following constitutional, statutory and regulatory provisions: U.S. Const. Amend. I; U.S. Const. Amend. V; U.S. Const. Amend. X; U.S. Const. Amend. XIV, § 1; 5 U.S.C. § 1501, et seq.; Conn. Gen. Stat. § 5-266a, et seq.; and Regulations of Connecticut State Agencies § 5-266a-1. The text of said provisions is reproduced in the Appendix, in accordance with U.S. Supreme Court Rule 14.1(f).

STATEMENT OF THE CASE

This petition arises from four civil actions filed in the United States District Court for the District of Connecticut seeking judicial review of decisions of the United States Merit Systems Protection Board (hereinafter "Board"), pursuant to 5 U.S.C. § 1508. The District Court had jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 1508.

In the underlying proceedings, the Board determined that the provisions of 5 U.S.C. § 1501, et seq. ("Hatch Act")

were violated by the political activities of Wayne H. Camillieri and Jack I. Winkleman, that the violations "warranted removal" from state employment, and ordered that funding be withheld the State of Connecticut in the total amount of $151,046[2] for failing to remove Camillieri and Winkleman from employment within thirty days of the Board's decisions. The petitioners asserted before the Board that the contemplated application of the Hatch Act violated the First Amendment, Tenth Amendment and constitutional guarantee of equal protection of the laws. These constitutional assertions were renewed before the District Court.

All four cases were consolidated before the District Court. Following cross-motions for summary judgment, judgment was entered in favor of the Board. The petitioners appealed the District Court decision to the United States Court of Appeals for the Second Circuit. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291 and 5 U.S.C. § 1508. After consideration of the appeal, the decision of the District Court was affirmed. The facts with respect to Wayne H. Camillieri and Jack I. Winkleman are as follows:

1. As to Wayne H. Camillieri

Since 1983, Wayne H. Camillieri's formal job title at the Connecticut Department of Human Resources was Human Resources Chief of Social Work Services. R. 33, Joint Stipulation of Facts ("JSF"), ¶ 1.[3] From January 1985 until November 1985, his functional job title was Acting Chief, Fair Hearing Unit ("FHU"). R. 33, JSF, ¶ 2.

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[2] The Board's withholding order recognized that it was issued "[i]n this case of first impression." 33 M.S.P.R. 167, 172 (1987); App. 38A. This represented the *first time* that the Board issued an order withholding funding from a State.

[3] The Joint Stipulation of Facts was filed while administrative proceedings involving Camillieri were still pending before the Chief Administrative Law Judge of the United States Merit Systems Protection Board.

In January 1985, Camillieri was assigned duties in connection with the FHU following efforts by DHR to identify a role for him, unrelated to federally funded activities. DHR's efforts were limited by state law considerations preventing a transfer to a noncomparable or lower ranking position. DHR's judgment was that an assignment in connection with the FHU presented less involvement with federally funded activities than any other assignment that was possible for him. R. 33, JSF, ¶ 3.

As Acting Chief of FHU, Camillieri was responsible for training and supervising examiners who, in turn, heard and decided administrative appeals filed by individuals and groups wishing to participate in social service programs administered by DHR. R. 33, JSF, ¶ 4. In 1985, the FHU performed duties involving state and federally funded social service programs. R. 33, JSF, ¶ 5.

In 1985, the FHU reviewed appeals filed by aggrieved parties of initial determinations made elsewhere in DHR. Camillieri did not conduct hearings nor did he schedule hearings. Neither he nor any of the hearing officers under his supervision had any discretion to diverge from the policy of DHR in the course of performing duties nor did they have authority to set the policy that they administered. R. 33, JSF, ¶ 6.

Camillieri spent slightly more than half of his time on state funded programs and the remaining time in connection with federally funded programs. Of the time that he spent in connection with federally funded programs, approximately half was spent training the hearing officers with respect to the proper method for conducting hearings under the Connecticut Uniform Administrative Procedures Act. R. 33, JSF, ¶ 7.

As FHU supervisor, Camillieri had authority to review and revise examiners' written hearing decisions to insure that conclusions of fact and law were consistent with hearing records. In practice, he only returned decisions to examiners for grammatical corrections. R. 33, JSF, ¶ 8.

Camillieri was a candidate in a partisan primary election conducted on September 10, 1985. R. 33, JSF, ¶ 13. During his candidacy he remained employed as Acting Chief of FHU, DHR. R. 33, JSF, ¶ 16.

2. As to Jack I. Winkleman

Throughout 1986, Jack I. Winkleman served as a Human Resource Development Senior Representative with DHR's Monitoring and Evaluation Division. In that position, he reviewed and evaluated the management and effectiveness of community and social service programs funded in large part by federal monies. R. 3, JSF, ¶ 2.[4] Throughout 1986, Winkleman spent a substantial amount of time performing review, evaluation and monitoring duties in connection with federally funded programs such as the Community Service Block Grant and the Social Service Block Grant. R. 3, JSF, ¶ 3.

Winkleman was the Republican candidate for Judge of Probate in Wallingford, Connecticut's general election on November 4, 1986. R. 3, JSF, ¶ 15. During his candidacy he remained employed as a Human Resource Development Senior Representative with DHR's Monitoring and Evaluation Division. R. 3, JSF, ¶ 16.

[4] The Joint Stipulation of Facts was filed while administrative proceedings involving Winkleman were still pending before the Chief Administrative Law Judge of the United States Merit Systems Protection Board.

REASONS FOR GRANTING THE WRIT

THE QUESTION OF WHETHER THIS COURT'S PREVIOUS DECISIONS INVOLVING THE HATCH ACT[5] REMAIN VIABLE IN LIGHT OF THIS COURT'S REASONING IN A SUBSEQUENT LINE OF CASES[6] IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

A. Whether Strict Scrutiny Ceases To Apply When Considering Whether The Application Of The Hatch Act To Political Activity By State Employees Is Unconstitutional.

The issue in this case is whether First Amendment protections that have developed for political speech cease to apply when the political activity of state employees is evaluated under the Hatch Act. The Hatch Act provides that: "A State or local officer or employee may not . . . (3) be a candidate for elective office." 5 U.S.C. § 1502(a).[7] By its very language, the Hatch Act purports to prohibit State employees from being candidates for elective office. In this case, Wayne Camillieri was a candidate for nomination to the Hartford, Connecticut City Council. R. 33, JSF, ¶ 13. Jack Winkleman was the Republican candidate for Probate Judge in the Wallingford, Connecticut general election. R. 3, JSF, ¶ 15. The

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[5] *United Public Workers v. Mitchell*, 330 U.S. 75 (1947); *State of Oklahoma v. U.S. Civil Service Commission*, 330 U.S. 127 (1947); *U.S. Civil Service Commission v. National Ass'n. of Letter Carriers*, 413 U.S. 548 (1974); *Broadrick v. Oklahoma*, 413 U.S. 601 (1974).

[6] *Buckley v. Valeo*, 424 U.S. 1 (1976); *Tashjian v. Republican Party of Connecticut*, ___ U.S. ___, 107 S.Ct. 544 (1986); *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, ___ U.S. ___, 107 S.Ct. 616 (1986).

[7] "State or local officer or employee" is defined to be "an individual whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency. . . ." 5 U.S.C. § 1501(4).

record of administrative proceedings before the Board is totally devoid of any evidence suggesting that either employee engaged in any political activity on State time or were in any way influenced in their public duties by considerations of machine politics.

After considering charges by the Special Counsel, the United States Merit Systems Protection Board determined that the Hatch Act was violated simply by these employees being candidates. Those determinations were appealed both by the employees concerned and by the State and are encompassed by this petition. Upon the State's failure to discharge the employees within thirty days of the Board's determination that the Hatch Act was violated, the Board issued orders withholding a total of $151,046 from the State of Connecticut. Those orders were also appealed and are encompassed by this petition. This represented the *first time* that the Board ever issued a withholding order to a State.

The four cases in the District Court that lead to this petition collectively presented the question of whether the application of the Hatch Act to the facts of the cases violated the First Amendment, Tenth Amendment and the equal protection guarantee of the Fifth Amendment.[8] These issues concern the individual constitutional rights of the employees, the State being penalized for honoring the constitutional rights of its employees by declining to fire them,[9] and the sovereign rights of the State of Connecticut to be free from

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[8] Governmental action which, if perpetrated by the states, violates the Equal Protection Clause of the Fourteenth Amendment, violates the Due Process Clause of the Fifth Amendment if perpetrated by the Federal Government. *Richardson v. Belcher*, 404 U.S. 78, 81 (1971); *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

[9] "It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech. *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697-98, 33 L.Ed.2d 570 (1972)." *Rankin v. McPherson*, ____ U.S. ____, 107 S.Ct. 2891, 2896 (1987).

improper interference by the federal government in the State's internal affairs.

In their decisions, both the District Court and the Court of Appeals felt constrained by this Court's previous decisions involving the Hatch Act, notwithstanding the rationale utilized in court decisions involving political activity subsequent to its previous Hatch Act cases. The Court of Appeals stated:

> [T]he Supreme Court has recently stated that the lower federal courts are not free to disregard directly applicable Supreme Court precedent on the theory that it has been undermined by that Court's reasoning in another line of cases. *Rodriguez de Quilas v. Shearson/American Express, Inc.*, 109 S.Ct. 1917, 1921-22 (1989).

Order of the Court of Appeals, App. 3A.

The District court stated the identical reservation. *State of Conn., DHR v. U.S.M S.P.B.*, 718 F.Supp. 125, 131 (D. Conn. 1989), App. 15A. The lower federal courts' recognition of the constraints that the *Rodriguez de Quilas* decision placed on their ability to fully address the constitutional issues in these cases leaves to this Court the question of whether recent court decisions involving political activity warrant the determination that the Hatch Act could not be constitutionally applied to the employees involved in this petition.

In its early Hatch Act cases, in 1947, this Court determined that regulation of the political activities of public employees only had to be "reasonable." *United Public Workers v. Mitchell*, 330 U.S. 75, 102 (1947); *State of Oklahoma v. U.S. Civil Service Commission*, 330 U.S. 127 (1947). The *Mitchell* case was a 4-3 plurality decision. Justice Black, in dissent, noted:

> [L]aws which restrict the liberties guaranteed by the First Amendment should be narrowly drawn to meet the evil aimed at and to affect only the minimum number of people imperatively necessary to prevent a grave and imminent danger to the public. . . .
>
> * * *
>
> Legislation which muzzles several million citizens threatens popular government, not only because it injures the individuals muzzled, but also, because of its harmful effect on the body politic in depriving it of the political participation and interest of such a large segment of our citizens.

Mitchell, 330 U.S. at 110–111 (Black, J., dissenting).

In 1973, the Court again had the opportunity to address the constitutional implications of the Hatch Act. In the cases of *U.S. Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548 (1973) and *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), the Court declined to determine that the Hatch Act, and a similar Oklahoma statute, were unconstitutional *on their face*. The majority opinion in *Broadrick*, a 5–4 decision, recognized the broad coverage of the Hatch Act and noted "that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which [the law's] sanctions, assertedly, may not be applied." *Broadrick*, 413 U.S. at 615–616.[10]

In subsequent cases involving political activity, but not involving the Hatch Act, this Court has made it clear that a "strict scrutiny" test is to be applied when considering laws involving political activity. The right of political association is a "basic constitutional freedom." *Buckley v. Valeo*, 424 U.S. 1, 25 (1976).

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[10]Significantly, the cases at bar do not challenge the law on its face. Rather, the challenge is to the law *as applied* to the particular facts presented. This would appear to be precisely the circumstance, contemplated in *Broadrick*, of determining whether the sanctions of the Hatch Act could be constitutionally applied to these specific facts.

> In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." [citation omitted]. Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." [citation omitted]. Even a "significant interference with protected rights of association" may be sustained *if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.* [citations omitted].

Buckley, 424 U.S. at 25 (emphasis added).

The Court has made it clear that the right of political association is protected by the First Amendment, and "[t]he right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Tashjian v. Republican Party of Connecticut,* ____ U.S. ____, 107 S.Ct. 544, 548-549 (1986). In determining that § 316 of the Federal Election Campaign Act, 2 U.S.C. § 441b, as applied to the Massachusetts Citizens for Life, Inc. impermissibly curtailed the organization's constitutionally protected political speech, the Supreme Court made it clear that "[w]hen a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.,* ____ U.S. ____, 107 S.Ct. 616, 624 (1986). Similarly, under constitutional principles of equal protection: "[Strict scrutiny] oversight by the courts is due when state laws impinge on personal rights protected by the Constitution." *City of Cleburne, Tex. v. Cleburne Living Center,* 473 U.S. 439, 440 (1985).

There should be little doubt that Wayne Camillieri's candidacy for nomination to a position on the Hartford City Council and Jack Winkleman's candidacy for Probate Judge in a general election are activities covered by the First Amendment. Candidacy is protected by the constitution. *Buckley v.*

Valeo, 424 U.S. 1, 25 (1976). Political activity is an integral part of the constitutional freedom represented by the First Amendment. *Tashjian*, ____ U.S. ____, 107 S.Ct. at 548-549; *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973). Nevertheless, the lower federal courts apparently felt that the *Rodriguez de Quilas* case prevented them from applying the "strict scrutiny" standard of review articulated in a subsequent line of decisions from this Court.

Cases not involving the Hatch Act in which a law burdens political activity are subject to review under a "strict scrutiny" standard. This Court should grant the petition for certiorari in order to make it clear that cases under the Hatch Act are also subject to this level of scrutiny. After all, why should state employees have less ability to fully participate in the political process, on their own time, than all other members of society?

B. In Determining Whether The U.S. Merit Systems Protection Board's Application Of The Hatch Act To Particular Cases Passes A "Strict Scrutiny" Test, The Question Of Whether There Is A Less Restrictive Alternative To Accomplish The Purposes Of The Hatch Act Should Also Be Considered.

One of the main components of a "strict scrutiny" standard of review is whether the government utilized the means to accomplish the desired end that is least restrictive of the employee's rights. *Elrod v. Burns*, 427 U.S. 347, 362-363 (1976). This was not addressed in the Court's previous Hatch Act cases.

It is clear that "the Hatch Act was passed by Congress to address particular forms of political party corruption and coercion perpetrated by, and victimizing federal, state and local government employees." *Bauers v. Cornett*, 865 F.2d 1517, 1520-1521 (8th Cir. 1989). The concern was that public employees would act in concert through coercion and machine

politics to "produce an inordinate influence on the way government executes the laws and provides services." *Biller v. U.S. Merit Systems Protection Bd.*, 863 F.2d 1079, 1090 (2d Cir. 1988). No such facts are present in this matter.

Petitioners argued to both the District Court and the Court of Appeals that provisions of Connecticut law and regulations[11] accomplished the same end as the Hatch Act in preserving the integrity of government, without being as restrictive. Since the lower federal courts felt constrained by the *Rodriguez de Quilas* case, they did not address this argument at all. Review should also be granted in order for this Court to make it clear that in applying a "strict scrutiny" standard of review, consideration must be given to whether a less restrictive means, such as the Connecticut statutes and regulations pointed out to the lower courts, accomplished the same objective as the Hatch Act, thereby preventing the application of the Hatch Act to the facts of the case involved.

C. Whether The Application Of The Hatch Act In A Manner That Imposes A Financial Penalty On A State For Honoring The Constitutional Rights Of A Public Employee Is A Violation Of The Tenth Amendment.

In addition to the concerns that the cases underlying this petition raise about the protection of individual political rights, they also raise serious concerns of federalism. The application of the Hatch Act to these particular cases represents a serious intrusion by the federal government into the internal affairs of the State of Connecticut, in a manner that should not be countenanced under the Tenth Amendment. This issue is separate and apart from the First Amendment and equal protection issues.

The District Court's decision expressed the judge's concerns:

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[11] Conn. Gen. Stat. § 5-266a, and Regulations of Connecticut State Agencies § 5-266a-1 (Connecticut State Ethics Commission).

> While I am sympathetic to the federalism concerns raised by the plaintiffs regarding this part of the Hatch Act, especially in light of the restrictions placed upon states in removing employees from their positions by our developing constitutional law, *see e.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), I must follow *Oklahoma [v. Civil Service Commission*, 330 U.S. 127, 67 S.Ct. 544 (1947)] and conclude that no unconstitutional intrusion upon the sovereign powers reserved to the State of Connecticut by the Tenth Amendment has taken place.

State of Conn, DHR v. U.S. M.S.P.B., 718 F.Supp. 125, 131-132 (D. Conn. 1989); App. 17A.

The District Court's concern was well founded, and not only because of evolving restrictions on removal of public employees from their positions.[12] The Hatch Act's application in these cases directly intrudes into the State of Connecticut's personnel system.

Petitioners recognize that *State of Oklahoma v. Civil Service Commission*, 330 U.S. 127 (1947) determines that the Hatch Act does not violate the Tenth Amendment. 330 U.S. at 143. By raising this issue in this petition, petitioners are asking that this Court seriously consider whether its

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[12]Under the *Loudermill* decision, prior to terminating a tenured employee, the public employer must provide "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." 470 U.S. at 546. Finalizing this process within thirty days of a determination by the Board that there is a Hatch Act violation that warrants removal in order to act prior to any order to withhold federal funding issues, consistent with the due process rights of the employee, would be extremely difficult at best. This puts the State between the proverbial rock and the hard place of weighing financial exposure resulting from the federal government withholding federal funding on one side against financial exposure resulting from violating the due process rights of the employee on the other side.

determination in *Oklahoma* that the Hatch Act does not violate the Tenth Amendment be limited or overruled.

The decision in *Oklahoma* was well before the Court's much more recent discussions of Tenth Amendment law in general in *Maryland v. Wirtz*, 398 U.S. 183 (1968); *National League of Cities v. Usery*, 426 U.S. 833 (1976); *Hodel v. Virginia Surface Min. & Reclaim. Ass'n*, 452 U.S. 264 (1981); and *Garcia v. San Antonio Metro. Transit Authority*, 469 U.S. 528 (1985). Of course, in view of the holding in *Garcia*, petitioners are also asking this Court to seriously consider whether its determination in *Garcia* be limited or overruled.

This case presents a better case for recognizing the limitations brought about by the Tenth Amendment than *Garcia*. First of all, the Hatch Act only regulates states as states, unlike the Fair Labor Standards Act, addressed in *Garcia*, which regulates governmental entities and private entities. It is only where the law regulates governmental and private entities, such as in *Garcia* where

> federal and state courts have struggled with the task . . . of identifying a traditional [governmental] function for purposes of state immunity under the Commerce Clause . . . [and this attempt] . . . is not only unworkable but is inconsistent with established principles of federalism.

Garcia, 469 U.S. at 530 (1985).

Since the Hatch Act does not involve private entities, it is not even necessary to try to draw the line that divides traditional governmental functions from other functions. Moreover, the Hatch Act is based upon the spending power rather than the Commerce Clause. The Court in *National League of Cities* recognized that there was a difference between the two. 426 U.S. at 852 n.17. Clearly "[t]here are limits on the power of Congress to impose conditions on the

states pursuant to its spending power." *Pennhurst State School v. Halderman*, 451 U.S. 1, 17 n.13 (1981).

Granting this petition on the question of whether the Hatch Act's application in the cases underlying the petition violated the Tenth Amendment would allow this Court to consider when the limits on Congress intruding into the internal affairs of a State pursuant to the spending power are reached.

CONCLUSION

For all of the foregoing reasons, petitioners respectfully submit that a writ of certiorari should be granted to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

PETITIONERS

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